(25)

A.C.R.

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

(DIVISION BENCH)

CRIMINAL APPEAL NO.130 OF 2003

Abdul Farid Khan

- Versus -

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
L.C. Bhadoo
Judge

HON'BLE THE CHIEF JUSTICE

Sd/-
Chief Justice

5th.11.2004

POST FOR JUDGMENT ON 8th. NOVEMBER, 2004

Sd/-
JUDGE
8th.11.2004

(26)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

(DIVISION BENCH)

CORAM: -

HON'BLE MR. A.S.V. MOORTHY, C.J.

AND HON'BLE MR. L.C. BHADOO, J.

CRIMINAL APPEAL NO.130 OF 2003

Abdul Farid Khan

- Versus -

State of Chhattisgarh

Present:

Shri H.S. Ahluwalia, Advocate: For the appellant.

Shri J.D. Bajpayee, Govt. Advocate: For the State/respondent.

J U D G M E N T

(Delivered on 8th November, 2004)

The following judgment of the Court was delivered by **Justice L.C. Bhadoo**: -

1. The accused/appellant has preferred this criminal appeal being aggrieved by the judgment of conviction and sentence dated 16.1.2003 passed by the learned 3rd Additional Sessions Judge (Fast Track Court), Kanker in Sessions Trial No.437/2002, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 3 months.

2. Briefly stated facts of the prosecution case necessary for disposal of this criminal appeal are that PW-3 Rehmat Bi gave the merg intimation Ex.P/2 to the In-charge Police Station Kanker that today i.e. 04.8.2002 at about 7.30p.m when she was at her residence, at that time, Chotte Khan & Bhuri came to her house and informed that Abdul Farid Khan @ Munna has murdered Samshad Begum in

the street of Sanjay Nagar Colony. On hearing this she went to the scene of occurrence along with Chotte Khan & Bhuri and saw that the body of her daughter Samshad Begum was lying in front of the house of one Patiram in the street of Sanjay Nagar Colony. The injuries were inflicted by some sharp edged weapon on the neck and hand of Samshad Begum and blood was oozing out from the injuries. Deceased Samshad Begum was married to accused/appellant about 13 years back, she delivered three children out of the wedlock. Around about four years back accused/appellant Abdul Farid deserted her daughter and on account of that animosity he has murdered her daughter Samshad Begum. On receiving this information the Station House Officer namely Yashwant Tekam registered the F.I.R. (Ex.P-1), thereafter, he proceeded to the scene of occurrence and after giving notice Ex.P-4 to the Panchas, he prepared the Panchnama (Ex.P-5) of the dead body of deceased Samshad Begum. During the police custody the accused/appellant gave information to the Investigating Officer under Section 27 of the Evidence Act (Ex.P-7) and in pursuance of that he got recovered a dagger (Katari) under Ex.P-8, his clothes were taken into possession by the Investigating Officer under Ex.P-9, clothes of deceased Samshad Begum were also taken into possession vide Ex.P-11 & 12. Dead body of Samshad Begum was sent for post mortem examination to Govt. K.D. Hospital, Kanker, where Dr. Balkrishan Verma (PW-18) conducted the post mortem and prepared a report (Ex.P-18). He opined that the cause of death was shock due to excessive bleeding and death was homicidal in nature.

3. The Investigating Officer took into possession plain soil and blood stained soil from the scene of occurrence under Ex.P-14. The recovered articles, clothes and the weapon of offence were sent for chemical examination to Forensic Science Laboratory, Raipur from where the report EX.P-28 was received. After completion of the investigation charge sheet was filed against the accused/appellant in the Court of Chief Judicial Magistrate, Kanker, who in turn committed the case to the Additional Sessions Judge, Kanker. In order to prove the offence against the accused/appellant prosecution examined in all 19 witnesses. On the other hand the

statement of accused/appellant was recorded under Section 313 of Cr.P.C. by the learned Additional Sessions Judge, who either replied that he does not know or that the prosecution evidence is false and in the last he stated that he is innocent and has been falsely implicated in the crime.

4. The learned Additional Sessions Judge after hearing Additional Public Prosecutor, counsel for the accused and perusal of the evidence, convicted and sentenced the accused/appellant in the aforesaid manner.

5. We have heard Shri H.S. Ahluwalia, learned counsel for the accused/appellant and Shri J.D. Bajpayee, Government Advocate for the State/respondent.

6. As far as the question of nature of death of deceased Samshad Begum being homicidal is concerned, learned counsel for the appellant has not disputed this fact. Even otherwise, Dr. Balkrishan Verma (P.W.-18), who conducted the postmortem on the dead body of Samshad Begum, has categorically stated that on 5.8.2002 he was working as Medical Officer in the Government Bomaldeo Hospital, Kanker and on that day on the request of the Police Station, Kanker he conducted the postmortem on the body of Samshad Begum. He noticed as many as 5 cut injuries on the neck of Samshad Begum, there was one injury on the temporal bone region in the size of 9x2cm deep upto the bone and there was injury on the wrist of the right hand. He further stated that in his opinion, cause of death was shock as a result of excessive bleeding and death of Samshad Begum was homicidal in nature. Therefore, in view of the evidence of Dr. Balkrishan Verma (Pw-18), it stands proved that nature of the death of Samshad Begum was homicidal in nature.

7. Now, coming to the involvement of the accused/appellant in committing the murder of Samshad Begum is concerned, PW-5 Radhika Bai & PW-17 Mohd. Ibrahim have turned hostile during trial. The conviction rest on the evidence of eyewitness PW-2 Shahrukh Khan aged about 5 years, who is son of the deceased and accused/appellant and on the circumstantial evidence i.e. recovery of weapon of offence Dagger at the instance of the

The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell them and thus a child witness is an easy prey to tutoring. The Hon'ble Apex Court in another decision of **Suryanarayana Vs. State of Karnatka reported in 2001 (1)Crimes 99 (SC)** has held that evidence of a child cannot be rejected per se, but the court as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of statements and its reliability, base conviction by accepting the statement of the child witness. The evidence of child cannot be discarded only on the ground of her/his being Teen age. The evidence of a child witness would require the court to scrutinize the evidence with care and caution. When the witness is shown to have stood the test of cross-examination and there is no infirmity in the evidence, the prosecution can rightly claim a conviction based upon the said testimony alone. Corroboration of testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. In a recent judgment in the case of **Ratan Singh Dalsukhbhai Nayak Vs. State of Gujarat reported in 2004 Supreme Court Cases (Cri.) 7** the Hon'ble Apex Court has held that the evidence of a child witness is permissible if such witness is found competent to testify and the court after careful scrutiny of its evidence is convinced about the quality and reliability of the same, where the witness described the detail scenario implicating the appellant, conviction can be based placing reliance thereupon. It was further held that the evidence of a child is not required to be rejected per se, but the court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability, can record conviction, based thereon and the trial Judge is required to take a decision as to whether the child witness has sufficient intelligence to understand the questions and in order to decide the intelligence the court may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath.

information from Hanif, where he saw that his mother was lying dead. In the examination-in-chief this witness has stated that he witnessed the crime whereas in the cross-examination he stated that he has not witnessed the crime, therefore, it is not safe to place reliance on the evidence of this witness that he actually witnessed the crime and that his father assaulted his mother. Moreover, it is an admitted position that on the date of incident PW-2 Shahrukh Khan was aged about 5 years and living with his maternal grandmother, who lodged the FIR in the case and also looking to evidence given in examination-in-chief and cross-examination that too after five months from the date of incident, as mentioned above the possibility of tutoring this witness cannot be ruled out. Therefore, without any corroboration in material particulars by some other evidence showing the involvement of the accused/ appellant in committing the murder of his own wife conviction cannot be rest solely on the evidence of this child witness.

11. As far as the question of connecting the accused/appellant with the murder of his wife on the basis of circumstantial evidence is concerned, it is settled law that before the court can record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point to the guilt of accused and are not capable of any explanation which is not consistent with the hypothesis of the guild of the accused.

12. The circumstances upon which the prosecution tried to prove the offence against the accused is that the weapon of offence Dagger was recovered at the instance of the accused, the Investigating Officer (PW-19) Yashwant Tekam has stated that while in custody the accused gave information Ex.P-7 and in pursuance of that he got recovered the Dagger under Ex.P-8. As has been mentioned above there is no ocular evidence in this regard to connect the accused with the murder of his wife Samshad Begum. The Dagger in question was sent to the Forensic Science Laboratory and as per FSL report Ex.P-28 the blood was found on the dagger in question

but there is no Serologist report to prove that the blood which was found on the dagger in question was human blood, that too it was of the blood group of deceased Samshad Begum, therefore, in absence of this evidence it cannot be held that the dagger in question was used in committing the murder of Samshad Begum. The similar is the point so far as the clothes of the accused and deceased are concerned, it is true that as per FSL report (Ex.P-28) the blood was found on the clothes but there is no Serologist report which shows that the blood which was found on the clothes of the accused and deceased was of the blood group of accused and deceased. Therefore, on this count also only the recovery of the clothes does not connect the accused in the crime.

13. Therefore, we are of the considered opinion that the finding of the trail court convicting and sentencing the accused/appellant cannot be sustained for the reasons mentioned above.

14. In the result, the appeal of the appellant succeeds and the same is allowed. The accused/appellant namely Abdul Farid Khan is acquitted of the charge under Section 302 of the I.P.C. He be released forthwith, if not required in any other case.

Sd/-
Chief Justice

-11-2004

Sd/-
L.C. Bhadoo
Judge

Roshan/-